

EXHIBIT G

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

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In Re: : 09-80795
MAHALO ENERGY (USA), INC., : Tulsa, Oklahoma
Debtor. : June 9, 2009
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TRANSCRIPT OF TELEPHONIC HEARING REGARDING
ISSUANCE OF BENCH RULING ON MOTIONS
BEFORE THE HONORABLE TERRENCE L. MICHAEL
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: G. DAVID BRYANT, ESQ.
STEPHEN W. ELLIOTT, ESQ.
Kline, Kline, Elliott &
Bryant, P.C.
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Oklahoma City, Oklahoma 73105
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GARY M. McDONALD, ESQ.
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Tulsa, Oklahoma 74103
For the Unsecured
Creditors Committee: LAURIE D. BABICH, ESQ.
Baker & McKenzie
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For Vectra CBM, LLC: MARK A. CRAIGE, ESQ.
Morrel, Saffa, Craige, P.C.
3501 South Yale Avenue
Tulsa, Oklahoma 74135

(Appearance continued on next page.)

Proceedings recorded by electronic sound recording,
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

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APPEARANCES CONTINUED:

For Wells Fargo Foothill, LLC:	JOHN E. HOWLAND, ESQ. Rosenstein, Fist & Ringold 525 South Main, Suite 700 Tulsa, Oklahoma 74103
For Savanna Energy Services Corp.:	KARALENA ROBERTS, ESQ. Elias, Books, Brown and Nelson, P.C. 211 N. Robinson - Suite 1300 Oklahoma City, Oklahoma 73102
For Rose Resources, LLC:	KEVIN P. DOYLE, ESQ. Pray, Walker, Jackman, Williamson & Marlar, P.C. 100 Fifth Street, Suite 900 Tulsa, Oklahoma 74103
For Williams Production Mid-Continent, LLC, and Penn Virginia MC Operating Company, LLC:	STEVEN W. SOULE, ESQ. JOHN T. RICHER, ESQ. Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C. 320 S. Boston Avenue, Suite 200 Tulsa, Oklahoma 74103
For Baker Hughes Oilfield Operations, Inc.:	HOLLY HAMM, ESQ. Snow, Fogel, Spence, LLP 2929 Allen Parkway, Suite 4100 Houston, Texas 77019
For Wells Fargo Foothill, LLC:	LAWRENCE V. GELBER, ESQ. Schulte, Roth & Zabel, LLP 919 Third Avenue New York, New York 10022
Special Counsel for UCC:	JOSHUA WELLS, ESQ.

(Appearances continue on next page.)

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

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APPEARANCES CONTINUED"

For the U.S. Trustee:	KATHERINE VANCE, ESQ. Office of the U.S. Trustee 224 South Boulder - Suite 225 Tulsa, Oklahoma 74103
Court Transcriber:	RUTH ANN HAGER TypeWrite Word Processing Service 211 N. Milton Road Saratoga Springs, New York 12866

1 (Proceedings began at 2:01 p.m.)

2 THE COURT: -- USA, Inc., debtor. It's a Chapter 11
3 case. We're here today for the Court to issue its bench ruling
4 on the motion to use cash collateral and the motion regarding
5 the sale procedures.

6 Could I have appearances for the record, please?

7 MR. BRYANT: Your Honor, for the debtor David Bryant,
8 Steve Elliott, Mark Monson [Ph.].

9 MR. KUTMAS: For Ableco, Your Honor, Chad Kutmas and
10 Gary McDonald and possibly Paul Moak is on the line.

11 MR. MOAK: Yes. Paul Moak is also here.

12 MS. BABICH: Your Honor, Laurie Babich for the
13 Unsecured Creditors' Committee.

14 MR. CRAIGE: Your Honor, Mark Craige for Vectra CBM,
15 LLC, and also my client's principals, Paul Heinz [Ph.] and
16 Kevin Herringer [Ph.] are listening in but have been instructed
17 to be silent unless otherwise directed to speak.

18 MR. HOWLAND: Your Honor, John Howland for Wells
19 Fargo Foothill.

20 MS. ROBERTS: Your Honor, Karalena [Ph.] Roberts for
21 Savannah Drilling and Trailblazer Drilling.

22 MR. DOYLE: Kevin Doyle, Rose Resources and my
23 client, Ben Stanley [Ph.] is also listening in.

24 MR. SOULE: Your Honor, Steve Soule for the Williams
25 entities and also for the Penn Virginia entities, and John

1 Richer is also on a different line from mine which may be
2 listening in. Thank you.

3 MS. HAMM: Your Honor, Holly Hamm on behalf of Baker
4 Hughes Oilfield [inaudible].

5 MR. GELBER: Your Honor, Lawrence Gelber of Schulte,
6 Roth & Zabel on behalf of Wells Fargo Foothill.

7 MR. WELLS: Your Honor, Joshua Wells [Ph.] as special
8 counsel for the UCC [Ph.].

9 THE COURT: Are there any other appearances?
10 United States Trustee is not on the call? Just a moment,
11 please.

12 [Pause in the proceedings.]

13 THE COURT: I apologize for the delay.

14 [Pause in the proceedings.]

15 THE COURT: Just a moment. We're waiting on the
16 United States Trustee to join the call.

17 [Pause in the proceedings.]

18 THE COURT: Has the United States Trustee joined this
19 call?

20 Whoever is speaking, just so you know, the microphone
21 is picking you up perfectly.

22 [Pause in the proceedings.]

23 THE COURT: We're going to go -- stay on the line
24 everyone but we are going to go off the record for just a
25 second. Hold on.

1 [Off the record.]

2 THE COURT: We are back on the record in case number
3 09-80795, Mahalo Energy (USA), Inc. It is my understanding a
4 party has joined the call. Is that correct? If so, would that
5 party please make an appearance?

6 MS. VANCE: Your Honor, Katherine Vance for the
7 United States Trustee.

8 THE COURT: Thank you.

9 Counsel, let me start with a little background as to
10 how this process works. When I issue bench rulings of this
11 nature, what I do is read my findings and conclusions into the
12 record. Those findings and conclusions are being transcribed
13 as we speak. An audio compact disk would be available, I
14 believe, yet today at the conclusion of the hearing and parties
15 can order transcripts.

16 Obviously, you are welcome to and I invite you to
17 take notes. I would advise the parties that I issue rulings
18 using a speaking outline and my speaking outline this afternoon
19 is 27 pages long, so note-taking might become a bit tedious.

20 Presently before the Court are the following motions:
21 The motion to use cash collateral, motion for authority to
22 obtain credit under Section 364(b) and Rule 4001(c), the
23 financing motion filed by the debtor; also are -- before the
24 Court is the motion to assume lease or executory contract under
25 Section 365; motion for sale of property under Section 363(b);

1 motion to sell property free and clear of liens of
2 substantially all property of the estate, which in effect I
3 will refer to as the sale procedures motion. Each of these
4 motions has drawn various and sundry objections. The
5 evidentiary hearing was held on the motions on June 8, 2002 --
6 2009. The evidence was received and argument made.

7 The following findings of fact and conclusions of law
8 are made pursuant to Federal Rule of Bankruptcy Procedure 7052,
9 which is made applicable to this contested matter by Federal
10 Rule of Bankruptcy Procedure 9014.

11 The Court makes the following findings regarding its
12 jurisdiction. The Court finds that it has jurisdiction over
13 this matter pursuant to 28 United States Code Section 1334(b).
14 The Court finds -- further finds that reference to the Court of
15 this bankruptcy case is proper pursuant to 28 United States
16 Code Section 157(a). The Court finds that the issues raised in
17 the financing motion and the sale procedures motion constitute
18 core proceedings as that term is defined under 28 United States
19 Code Section 157(b)(2)(A)(M) and (N).

20 The Court further finds that this case has been
21 referred to this Court by general order of the United States
22 District Court for the Eastern District of Oklahoma. On that
23 basis the Court concludes that it has jurisdiction and
24 authority to enter its findings of fact, conclusions of law and
25 judgment.

1 The Court makes the following findings of fact.
2 Mahalo Energy (USA) filed an original petition for relief under
3 Chapter 11 of the United States Bankruptcy Code with this court
4 on May 21, 2009, some 19 days ago. It continues in control of
5 its assets as a debtor-in-possession. Its primary business is
6 the acquisition of, exploration for, and development and
7 production of coal bed methane and shale gas in Hughes, Le
8 Flore, Okfuskee, McIntosh and Pittsburg Counties in the State
9 of Oklahoma. The debtor owns interest in approximately 300
10 producing gas wells and leases over 60,000 net acres of coal
11 bed methane and shale gas prospective lands.

12 The debtor is wholly owned by Mahalo Energy, Limited,
13 an Alberta corporation that has presently filed for creditor
14 protection under Canadian law, which was described at the
15 evidentiary hearing as roughly the equivalent of a Chapter 11
16 bankruptcy case in the United States. Management of the debtor
17 consists of six officers and employees in the country of
18 Canada, as well as staff in Tulsa and field operators. The
19 staff is well compensated. Turning to the Canadian staff,
20 there are six employees. The president and chief executive
21 officer, Mr. Burns [Ph.] who testified in court, is paid
22 \$170,000.00 per year in Canadian dollars. The Chief Operating
23 Officer is paid \$185,000.00 per year in Canadian dollars.
24 There are four other Canada employees, two accountants and two
25 engineers who are paid a total of 450 -- and the administrator,

1 which I believe I have already included, paid a total of
2 \$450,000.00 per year. Total salary is approximately
3 \$805,000.00 per year Canadian or \$722,350.00 in U.S. dollars.

4 In Tulsa the debtor employs four accountants and two
5 land men [Ph.] who are paid a total of \$490,000.00 per year.
6 There's also a Canadian ex patriate consultant, is how the
7 person was described yesterday, working in the Tulsa office.
8 That person's salary was unclear but when I get to and begin to
9 discuss the budget that person is paid under a separate line
10 item in the budget. Total administrative compensation for the
11 debtor's professional -- or debtor's employees and officers,
12 not including outside professionals or consultants or field
13 people, totals approximately \$1,212,350.00 per year or
14 \$101,000.00 per month.

15 Creditors of the debtor include the following:
16 Ableco, which in various of the documents that are at issue
17 today is described as an administrative agent and lender, and
18 Wells Fargo Foothill, LLC, described as a processing agent and
19 lender. Throughout most of the hearing today I will
20 collectively refer to the credit -- this creditor and the debt
21 as Ableco. They hold a claim in the approximate amount of 73
22 million dollars and claim a first lien position on virtually
23 all of the debtor's assets. Ableco is also the proposed lender
24 under the proposed debtor-in-possession financing arrangement.

25 Historically, the evidence before the Court indicates

1 that as of June 30, 2008 the debt at issue was 64 million
2 dollars and was owed to Union Bank of California. That debt
3 was then acquired by Ableco. Under the terms of the
4 acquisition and subsequent financing the debtor was to meet
5 certain performance or -- criteria or have a sale arrangement
6 of its property by March 31, 2009 or would be assessed an
7 additional fee under the contractual arrangement with Ableco of
8 ten million dollars. The criteria was not met and the fee was
9 assessed.

10 In addition, the debtor states that it has trade
11 payables of approximately 12.5 million dollars and the debtor
12 also lists a debt to its parent corporation, Mahalo Energy
13 Limited, of 22 million dollars. The nature of this debt is
14 somewhat unclear. James Burns, who is both the president of
15 the debtor and of Mahalo Energy Limited, testified that this is
16 inner-company debt and is in the nature of an unsecured claim.
17 However, he did admit that no lone documentation exists with
18 respect to this debt.

19 There are also secured creditors under various joint
20 operating agreements. Pursuant thereto, entities such as
21 Williams Production Mid-Continent Company operate natural gas
22 wells in which the debtor has a working interest. The working
23 interest owner such as the debtor is required to pay its
24 proportionate share of costs, expenses and joint interest
25 billings to entities such as Williams as the operator.

1 Creditors such as these have filed liens securing their claims.
2 They have pled the same in their objections and they will be
3 considered secured creditors for the purposes of this ruling.

4 Now turn to a brief discussion of the prepetition
5 financial history of the debtor. Prior to October of 2008 the
6 debtor engaged in an aggressive drilling program for gas based
7 upon expectations that prices for the commodity would remain
8 strong or grow stronger. The economy did not perform as hoped
9 for and the debtor defaulted upon its various loan obligations
10 to Ableco. In November of 2008 Ableco began sweeping the
11 accounts of debtor at the Union Bank of California and applying
12 all swept funds to its indebtedness. Swept funds may have
13 included funds held by debtor in trust for others. Under its
14 working arrangement with Ableco the debtor would make requests
15 for -- of Ableco for draws in order to pay expenses. Ableco
16 would then decide how much to advance to the debtor in its sole
17 discretion.

18 Prior to the filing of the bankruptcy case the debtor
19 repay -- retained GMP Securities, LP, where I will refer to
20 "GMP", as an advisor to sell its assets as a going concern.
21 The sale of the business was advertised. The data room was set
22 up in order to allow prospective buyers to con -- conduct due
23 diligence. Solicitations were sent to approximately 220
24 prospective buyers. GMP spoke to 140 of them. Thirteen of
25 them signed confidentiality agreements in order to obtain

1 access to the information contained in the data room. Twelve
2 looked at the data and five made bids or sale proposals as a
3 result of this process. Three of those were cash bids in the
4 range of 45 million dollars. One proposed offer required
5 financing that never materialized and the other involved a
6 merger with another insolvent company and was rejected. As a
7 result no sale took place or other debtor's assets took place
8 prior to the filing of this bankruptcy case.

9 In looking at the value of the debtor's assets at
10 this point in time based upon the record before the Court, any
11 such determination is problematic at best. The debtor engaged
12 in a concerted effort to sell its assets as a going concern
13 prior to the filing in this case. That procedure generated a
14 high bid of 45 million dollars. The evidence before the Court
15 was offer -- the evidence before the Court was offered
16 yesterday to the effect that after that process was concluded
17 or at least outside of that process the debtor received another
18 cash offering in the range of 60 million dollars. The
19 information about this bid was sketchy and the one thing that
20 was clear is that this bid did not originate from the
21 prepetition sale process. The Court will consider 60 million
22 dollars as a maximum valuation of debtor's assets for the
23 purposes of today's ruling.

24 Following the filing of the bankruptcy case the
25 debtor in order to continue operations made efforts to obtain

1 post-petition financing. Debtor, through its consultants
2 Alvarez and Marsal, who I will refer to as "A&M," sought
3 debtor-in-possession financing, or DIP financing, from four
4 sources: D. E. Shaw [Ph.], Fortress, Silverpoint [Ph.] and
5 Natural Gas Partners. To put it simply, there were no takers.
6 The debtor was unable to obtain any unsecured credit even if it
7 were grant such credit super-priority status.

8 Mr. Dean Swick, the director at A&M that is working
9 directly with the debtor, stating that as a result of his
10 efforts the financing agreement or the proposed financing that
11 will be later discussed was agreed to and negotiated between
12 the debtor and Ableco. In his experience the financial terms
13 of that financing are favorable within the marketplace.
14 Mr. Swick's testimony led the Court to believe that Mr. Swick
15 was not involved in the negotiation of many of the nonfinancial
16 terms of the proposed financing. That proposed financing may
17 be described as follows: It involves not only financing but
18 the use of cash collateral. The parties to the agreement are
19 Mahalo Energy (USA), our debtor-in-possession, Ableco Finance,
20 LLC, who I have referred to as "Ableco," and Mahalo Energy
21 Limited, the parent company of the debtor.

22 The loan particulars are as follows. The amount of
23 the loan is two million dollars. The proposed financing
24 arrangement requires that debtor draw down the entire two
25 million dollars upon approval of the motion. There's a

1 \$40,000.00 origination fee.

2 Proceeds of the loan are to be used, among other
3 things, to pay all of Ableco's fees and expenses incurred in
4 connection with the making of the loan. The term of the loan
5 is brief. The term is 18 days if a final financing order is
6 not entered, three months after financing -- or after a final
7 financing order is entered, and last prior to that date there
8 is a sale of all assets to the debtor or if there is somewhere
9 in the loan documents an earlier date as may be prescribed in
10 those documents. For the record, those documents are
11 voluminous.

12 The interest rate under the term of the loan is
13 variable with a floor of either 16 or 16.5 percent. It is
14 equal -- according to Mr. Swick, it is equal to the rate
15 charged by Ableco in its last tranch of financing provided to
16 the debtor prior to the case filing.

17 The collateral for the DIP loan is all of the
18 debtor's assets. This lien to be granted is a priming lien and
19 is to be given priority over all prepetition secured claims.
20 In addition, Ableco is to receive a super priority claim
21 superior to all other super priority claims except the United
22 States Trustee fees and a \$250,000.00 professional fee carve-
23 out. This super priority is to trump all claims that may ever
24 arise in this case under Section 726 of the Code, including
25 claims for a Chapter 7 trustee fees and expenses in the event

1 of conversion. No other super priority claims may be granted
2 absent the agreement of the lender.

3 The Court notes that although counsel for Ableco
4 stated at the hearing that the super priority exists only as to
5 the two million-dollar advance, not as to any prepetition debt,
6 the Court having read Section 10(a) of the proposed order finds
7 that the order is a bit unclear in that regard. It could be
8 argued that it -- that the order as drafted, and I'm talking
9 about the order that was submitted earlier today and I have
10 read that order for the record, arguably grants a super
11 priority administrative expense claim securing all of Ableco's
12 prepetition indebtedness. I'm simply saying it's unclear in
13 that regard. I note that that provision is found in page 8 of
14 a 37-page order.

15 The proposed financing also involves the use of cash
16 collateral. According to the budget offered and received into
17 evidence the cash collateral use is for the period from
18 June 12, 2009 through August 7, 2009, or approximately two
19 months for several of the items in the budget merit discussion.
20 Included in the budget is \$422,524.00 to Mahalo Energy Limited
21 for management and overhead services. This is roughly
22 \$211,000.00 per month. This number is hard squared with the
23 historical cost of the Tulsa and Canadian administrative
24 employees. The Court notes that none of these corporate
25 officers appear to have taken any reduction in salary since the

1 filing of the case. What makes this number even harder to
2 understand is the fact that, according to the testimony of
3 Mr. Burns, the category management and overhead fee in the
4 budget referred only to the admin -- payment of the salaries of
5 the administrative employees in Canada, which should total
6 significantly less than this amount. If the Court's
7 calculations and dollar conversion is correct, it should total
8 about \$60,200.00 per month.

9 Also included in the budget was \$902,500.00 in
10 professional fees. Those fees are to be paid among others to
11 the debtor's U.S. counsel. Mr. Burns testified that some of
12 those fees are also to be paid to Canadian counsel. The
13 identity of those counsel, the scope of services performed, and
14 how any Canadian counsel fit into this case is presently
15 unknown to the Court. It involves payment of fees to GMP,
16 payment of fees to counsel for the unsecured Creditors
17 Committee, payment of the statutory fees owed to the United
18 States Trustee, and counsel fees owed to Ableco. The budget
19 also calls for \$104,000.00 to be paid in retention bonuses,
20 which according to Mr. Burns are necessary for Mahalo -- for
21 the debtor to retain key personnel.

22 The budget provides for payment of \$28,307.00 in
23 severance pay. According to Mr. Burns this is simply an effort
24 by the debtor to, and I quote, "Do the right thing" as
25 employees are let go. Mr. Burns admits there is no contractual

1 obligation of the debtor to make such payments.

2 The budget contains a provision for \$95,607.00 in
3 other expenses. None of these expenses was explained or
4 justified in any significant detail beyond the statement of Mr.
5 Burns as current management of the debtor that they are
6 necessary. In addition, the budget provides for adequate
7 protection payments, payment of post-petition interest on the
8 prepetition claims of Ableco totaling \$1,764,451.00 between now
9 and August 7, 2009. According to Mr. Swick, the debtor agreed
10 to pay this post-petition interest because Ableco demanded it
11 and the debtor had no other financing options. According to
12 Mr. Swick, were debtor not to pay these sums the debtor's cash
13 flow would allow it to operate without borrowing until at least
14 July 3, 2009 using cash collateral.

15 The Court notes that with respect to this
16 payment of -- this \$1,764,000.00 payment, the initial proposed
17 financing order expressly described those payments as payments
18 of post-petition interest on prepetition debt. So the record
19 is clear, let me state that at the time the financing motion
20 was originally filed submitted to the Court was a proposed
21 interim order, which has not been entered but it was submitted
22 to the Court for review. Earlier today a proposed final order
23 and a redline copy of the order showing the changes between the
24 two was submitted to the Court. Parenthetically, I would like
25 to express my appreciation to the parties for submission of the

1 redline copies. That greatly assisted the Court and I am
2 grateful.

3 The order entered today reflects the statements made
4 by counsel for Ableco at yesterday's hearing that the issue of
5 whether the entitlement to post-petition interest on a
6 prepetition debt need not be addressed by the Court, that
7 instead the Court could treat the payments as partial payment
8 of Ableco's petition claim -- prepetition claim and determine
9 later whether the sum should be applied to principal or
10 interest. In addition, there was other adequate protection
11 offered for the use of cash collateral. The placement liens
12 and all collateral equal -- in an amount equal to the
13 diminution and value of the collateral and yet another super-
14 priority claim. The Court also notes and I admitted -- I
15 apologize, I omitted this earlier, but the budget also provides
16 for \$55,000.00 to be paid in post-petition interest charges
17 under the DIP financing.

18 There has been no offer of adequate protection made
19 to any other party that may have an interest in any property of
20 the debtor. Other creditors have claimed to have a first lien
21 on certain of the debtor's assets. Those creditors include:
22 Williams Production Mid-Continent Company, who I will hereafter
23 refer to as "Williams"; Baker Hughes Oilfield Operations,
24 Incorporated, "Baker Hughes"; Savanna Energy Services
25 Corporation and Trailblazer Drilling Corporation, "Savanna";

1 and Penn Virginia Oil and Gas Corporation, "Penn." The nature,
2 extent and priority of those liens has not been determined --
3 pardon me -- given the expedited nature of these hearings. No
4 one has disputed their existence or at least their potential
5 existence for the purposes of these hearings and the Court will
6 presume that such a security interest exists for the purposes
7 of today's ruling. Such presumption is only for the purpose of
8 this ruling and the nature, extent and priority of those liens
9 is expressly subject to future determination if necessary.

10 There are other provisions in the proposed financing
11 order that merit mentioning at this point. Under the terms of
12 the proposed agreement and order the debtor waives the right to
13 seek use of cash collateral or post-petition lending on any
14 other terms or from any other entity. The debtor, and I quote,
15 "broadly indemnifies each lender, their agents and each of
16 their affiliates, partners, directors, officers, employees,
17 agents and advisors."

18 The waiver of the right to use cash collateral or
19 obtain post-petition financing effectively precludes any route
20 for this case other than the proposed sale of assets. In the
21 event of default Ableco is authorized to enter into any leased
22 premises to receive its collateral without notice to any
23 landlord and regardless of the contractual relationship between
24 the debtor as lessee and any such landlord as lessor. None of
25 Ableco's collateral may ever be surcharged for any reason under

1 Section 506(c) of the Bankruptcy Code. Under the terms of the
2 proposed financing debtor, and I quote: "hereby forever waives
3 and releases any and all claims as defined in the Bankruptcy
4 Code, counterclaims, causes of actions, defenses or setoff
5 rights against the prepetition agent and the prepetition
6 lenders," which are Ableco and Wells Fargo, whether arising at
7 law or in equity, including the recharacterization,
8 subordination, avoidance or other claim arising under or
9 pursuant to Section 105 or Chapter 5 of the Bankruptcy Code or
10 under any other similar provisions of applicable state or
11 federal law." That's found in Sect -- or paragraph 11(i) at
12 page 14 of the proposed financing order.

13 Provision is -- this provision is especially
14 troubling given the allegations that some of the funds
15 collected by Ableco and applied to its indebtedness may have
16 been held in trust by the debtor for its operators or those
17 entitled to royalties. The proposed order gives all other
18 parties in the case 45 days from the petition date to review
19 and object to the prepetition claims of the lender, post-
20 petition claims of the post-petition lenders or forever hold
21 their peace. Moreover, if no objection is timely filed, all
22 parties are bound by the stipulations of the debtor regarding
23 the validity of those creditors' positions. That provision is
24 binding upon any Chapter 7 trustee subsequently appointed in
25 this case in the event the case were to be converted.

1 Upon the occurrence of the event of default the
2 automatic stay is lifted, the right to use cash collateral is
3 terminated and the lender can immediately enforce all remedies
4 including the rights of setoff. Upon the issuance of a final
5 order approving the financing arrangement, Ableco has a lien
6 upon all Chapter 5 claims the debtor may have against any
7 parties to secure both pre- and post-petition indebtedness.
8 This financing arrangement may be modified by the debtor and
9 the letter -- lender without court approval upon five days'
10 notice to the unsecured Creditors' Committee and the United
11 States Trustee. While the debtor agrees to pay all of Ableco's
12 expenses incurred as a result of the post-petition financing
13 from estate funds, none of the expenses are subject to review
14 by any party or the Court. The Court also notes that, at least
15 under the terms of the proposed financing order, the entire
16 financing arrangement is off if the financing order is not
17 entered within 18 days of the date of the filing of the
18 petition. Obviously that date has come and gone.

19 Under the terms of the pre -- the order of the Court
20 is -- this Court is to retain jurisdiction in order to enforce
21 the security interest granted to Ableco under the debtor-in-
22 possession loan. I note parenthetically, this may just be
23 selfish on my part, but in this Court's opinion the Bankruptcy
24 Court is not a place to file foreclosures or replevins or suits
25 on notes. Those belong in state court or, if diversity exists,

1 perhaps in federal district court but so the parties know, as
2 they proceed the Court would not agree to the entry of such a
3 provision.

4 Let us now turn to the sales procedure motion. On
5 May 21, 2009, the petition date, the debtor entered an asset
6 purchase agreement, which I will refer to as the "CME
7 agreement" or "stalking horse agreement" with an affiliate of
8 Ableco called CME Asset Holdings, which I will refer to as
9 "CME" or the "stalking horse." Under the terms of the CME
10 agreement, CME agrees to buy all of the debtor's assets. The
11 terms of the sale are that (1) CME will be allowed to credit
12 bid the debt owed to Ableco. That bid is to be in the amount I
13 believe of 63 million dollars. My belief as to that number is
14 based upon testimony of the June 8, 2009 hearing. The sale
15 agreement is a bit cryptic as to the amount of the bid.

16 In addition to the credit bid, there is to be a cash
17 payment of \$350,000.00 and CME will pay an amount required
18 under Section 365(b)(1) of the United States Bankruptcy Code to
19 assume the executory contracts and unexpired leases to be
20 assigned to CME subject to limitations on the cure cost in the
21 agreement and CME reserves the right to reject any contracts or
22 releases. The sale is subject to higher and better offers
23 under the bidding procedures that have been proposed.

24 What is being sought today is not approval of that
25 sale but approval of a bidding procedure process, specifically

1 the relief requested is as follows: The authorizing and
2 scheduling of an auction at which the debtor will solicit
3 higher and better offers in connection with the sale of
4 substantially all set -- assets of the estate; the
5 establishment of a bid deadline; scheduling of an auction to
6 occur within approximately 30 days after entry of the bidding
7 procedures order; approving the bidding procedures for such
8 assets; approving the form and scope of the notice of the
9 bidding procedures at auction, and I note parenthetically that
10 ori -- at least originally the bidding procedures order under
11 the terms of the parties' agreement had to be entered on or
12 before 18 days after the petition date, and again that date has
13 come and gone. Under the terms of the agreement the debtor
14 reserves the right to modify the bid procedures as set forth in
15 the order without further notice to the Court or the Court's
16 approval. I direct the parties to the bidding procedures found
17 at Docket 23-1 at page 17.

18 The Court has asked to schedule a sale hearing in
19 order to approve the sale to the winning bidder. The Court has
20 asked to waive any ten-day stay of the order authorizing sale
21 as provided in Federal Rule of Bankruptcy Procedure 6004(h).
22 After conclusion of the sale the Court has asked to approve the
23 sale of the assets free and clear of all liens, claims and
24 encumbrances which is allowed under Section 363(f) of the Code
25 if effective lien holders consent. The debtor asks the Court

1 to treat any failure to object as the equivalent of consent to
2 the sale. Debtor asks that the Court protect the purchaser as
3 a good faith purchaser under Section 363(m) of the Code,
4 including the stalking horse bidder. The effect of this would
5 be that reverse rule or modification on appeal could not effect
6 the validity of the sale. As I noted, the debtor wants the
7 stalking horse to be clare -- to be declared a good-faith
8 purchaser by the Court before the fact of any appeal or
9 modification. The motion states that the arm's-length nature
10 of the transaction will be demonstrated at the sale.

11 The debtor wants the procedure for assumption in
12 executory contracts and leases as set forth in the sale
13 agreement approved, the form and scope of notice of assumption
14 and assignment approved, and with respect to the assumption and
15 assignment the waiver of any ten-day stay of an order
16 authorizing the assignment as provided in Rule 6000(d).

17 The debtor seeks approval of a \$10,000.00 breakup fee
18 to the stalking horse bidder in the event there is a higher
19 bidder and also seeks approval of the expenses incurred by the
20 stalking horse bidder. Those expenses are to be approved
21 without Court review and to the extent they are for any reason
22 unpaid they are to -- all of the breakup fee and the expenses
23 are entitled to administrative priority under Sections 4.5 and
24 7.2 on the stalking horse agreement. Those are my basic
25 findings of fact.

1 As I am sure the parties can appreciate in a bench
2 ruling of this nature, it is possible if not likely that
3 additional findings of fact will inadvertently be misplaced in
4 my conclusions of law. Any such misplaced findings of fact are
5 incorporated into the Court's findings of fact by this
6 reference. As the Court reviews both the financing motion and
7 the sales procedure motion, it finds the following statements
8 of Judge Marlar of the United States Bankruptcy Court for the
9 District of Arizona applicable to the facts of this case and I
10 quote:

11 "Debtors in possession generally enjoy little negotiating
12 power with the proposed lender, particularly when the
13 lender has a prepetition lien on cash collateral and other
14 assets. As a result, lenders often exact terms that are
15 favorable to them but that harm the estate and all other
16 creditors."

17 Judge Mahler cites two cases, In the Matter of: Ames [Ph.]
18 Department Stores, Inc., 115 Bankruptcy Reporter, page 34 at
19 page 38, a 1990 decision of the United States Bankruptcy Court
20 for the Southern District of New York; in a case entitled In
21 Re: Tenney, T-E-N-N-E-Y, Village Company, 104 Bankruptcy
22 Reporter 562 at pages 567-570, a 1989 decision of the United
23 States Bankruptcy Court for the District of New Hampshire.

24 Judge Marlar goes on to state and I continue the
25 quote:

1 "While certain favorable financing terms may be permitted
2 as a reasonable exercise of the debtor's business
3 judgment, Bankruptcy Courts do not allow terms in
4 financing arrangements which convert the bankruptcy
5 process from one design to benefit all creditors to one
6 design for the unwarranted benefit of a post-petition
7 lender."

8 Citing the same cases again.

9 "Thus, Courts look to whether the proposed terms would
10 prejudice the powers and rights that the Code confers for
11 the benefit of all creditors, thereby leveraging the
12 Chapter 11 process by granting a lender excessive control
13 over the debtor or its assets with the prejudice of other
14 parties in interest."

15 Again, citing the Ames and Tenney cases.

16 "The Bankruptcy Court cannot under the guise of Section
17 364 approve financing arrangements that amount to a plan
18 of reorganization but of eight confirmation requirements."

19 Citing a case in the matter entitled In the Matter of Chevy
20 Devco, C-H-E-V-Y, D-E-V-C-O, 78 Bankruptcy Reporter 585 at
21 pages 589 and 590, a 1987 decision of the 19 -- of the United
22 States Bankruptcy Court for the Central District of California.

23 Judge Marlar's decision is found in a case entitled
24 In the Matter of Berry, B-E-R-R-Y, Good, G-O-O-D, LLC, 400
25 Bankruptcy Reporter 741 at page 747, a 2008 decision from the

1 Bankruptcy Court for the District of Arizona. I will hereafter
2 refer to that case as I cite it in the future as the Berry Good
3 case.

4 The financing motion is brought by the debtor under
5 Section 364(d) of the Bankruptcy Code, which provides that and
6 I quote:

7 "The Court after notice in a hearing may authorize the
8 obtaining of credit or the incurring of debt secured by a
9 senior or equal lien on property of the estate that is
10 subject to a lien only if the Trustee is unable to obtain
11 such credit otherwise and there is adequate protection of
12 the interest of the holder of the lien on the property of
13 the estate on which that senior or equal lien is proposed
14 to be granted."

15 Subsection 2 of 364(d) states that:

16 "In any hearing under this subsection the Trustee has the
17 burden of proof on the issue of adequate protection."

18 Financing under Section 364(d) of the Code is
19 commonly known as financing through the use of a priming lien
20 because the lien at issue is given superiority to or primes the
21 liens held by present creditors of the debtor. Priming is an
22 extraordinary remedy. Our Court of Appeals has not ruled upon
23 the issue. Two things, however, are clear. If a priming lien
24 is to be granted a debtor must provide adequate protection to
25 the liens being primed and the debtor has the burden of proof

1 on the issue of adequate protection. This Court feels that
2 some of the principals that are used in determining whether to
3 authorize credit under Section 364(c) of the Code may be of use
4 here.

5 The United States Bankruptcy Court for the District
6 of Colorado has held that a debtor must prove the following
7 four elements to obtain post-petition financing under that
8 section. They must establish that the proposed financing is an
9 exercise of sound and reasonable business judgment, that no
10 alternative financing is available on any other basis, that the
11 financing is in the best interest of the estate and its
12 creditors, and that no better offers, bids or timely proposals
13 are before the Court. Direct the parties to a decision
14 entitled In the Matter of Western Pacific Airlines, Inc., 223
15 Bankruptcy Reporter 567, a 1997 decision of the United States
16 Bankruptcy Court for the District of Colorado. The Court will
17 consider the teachings of the Western Pacific case, the
18 requirements of adequate protection under 364(d), and the
19 pronouncements of Judge Marlar in Berry Good as it considers
20 whether to approve the financing motion.

21 Looking at this matter the Court is satisfied that
22 the debtor is unable to obtain unsecured credit or credit
23 secured by a junior lien on property of the estate. The Court
24 is also satisfied, albeit a bit reluctantly, that as to
25 interest rate and the fact that an initial draw of two million

1 dollars is required, no better offers of financing are
2 available to the debtor. The motion, however, becomes
3 problematic when it comes to the requirement of adequate
4 protection.

5 The statute is clear. In order for a priming lien to
6 be authorized there must be adequate protection of those
7 creditors whose lien is being primed. Here we have several
8 creditors who claim liens on prop -- several creditors other
9 than Ableco who claim liens on property of the debtor. While
10 the validity of the liens has not been established through
11 litigation, all of the parties who appeared before the Court
12 and in effect asked the Court to presume that their lien was
13 valid and given the expedited nature of this matter, the Court
14 has chosen to do so. The Court is certainly not in a position
15 to discard any of the claimed liens as invalid. With the
16 exception of Ableco, the debtor has chosen to offer no adequate
17 protection to any of the lien holders who are being primed.

18 In closing, counsel -- in closing argument, excuse
19 me, counsel for the debtor suggested that there may be equity
20 in the assets of the debtor that are subject to those
21 creditors' liens. The Court is not persuaded that the record
22 contains sufficient detail regarding the alleged equity to
23 protect any of those creditors and rejects the argument. This
24 Court is also not convinced based upon the teachings of Berry
25 Good that the proposed financing is in the best interest of the

1 creditors of this estate.' The debtor is doing what many a
2 cash-strapped debtor in a Chapter 11 case does, is giving up
3 all of its rights and remedies, indeed even the right to see if
4 any such rights and remedies might exist against its major
5 lender in order to have the cash to live another day. It is
6 important to remember here that there was not one scintilla of
7 evidence offered by the debtor to the effect that any of the
8 debtor's principals had made any review of the loan
9 documentation between the debtor and Ableco in order to make a
10 determination of the validity of that documentation or that the
11 debtor had no claims against Ableco.

12 There was uncontroverted testimony that debtor -- or
13 that Ableco had taken funds held by the debtor in trust and
14 applied them to its debt. The Court has no idea whether anyone
15 was ultimately damaged by this and it makes more -- no
16 determination one way or another at this point in time. It is
17 certainly possible that Ableco re-advanced any wrongfully taken
18 funds to the debtor and that those funds once re-advanced
19 ultimately reached their proper destination. I have no idea,
20 but the debtor is forfeiting its right to even investigate this
21 and every other issue at the inception of this case.

22 The debtor has taken the position and argued to the
23 Court that the financing motion and the sales procedure motion
24 are to be taken together. When that is done it seems clear to
25 the Court that sale of the debtor's assets by motion is the

1 primary objective of both Ableco and the debtor, that the sale
2 occurs as debtor and Ableco hope. Regardless of whether the
3 sale is to a third-party cash bidder or to the stalking horse,
4 it is almost certain that this case will not proceed to a plan
5 and disclosure statement for there will be nothing to
6 reorganize. Indeed, reorganization is not the goal here;
7 proposed sale appears to be a substitute for a plan.

8 It also appears to the Court that the structure of
9 this case in its present posture is likely to benefit no one
10 except Ableco. Months of prepetition attempts to sell this
11 debtor were fruitless. The only thing that has changed is that
12 the debtor is now in Chapter 11. There is no testimony upon
13 which the Court could base a reasonable belief that a white
14 knight stands somewhere on the horizon ready to rescue this
15 debtor and its creditors.

16 The deadlines proposed by Ableco in the financing and
17 sale procedures motions have the effect of forcing this case to
18 operate at light speed. Parties who have never seen any of the
19 loan documents in this case have 45 days to review those
20 documents and make whatever claims they may have. The Court
21 notes that the normal statute of limitations for such actions
22 under Chapter 5 of the Bankruptcy Code is two years.

23 Ableco has a *de facto* veto power over any actions
24 taken by the debtor that are not in direct accord with the
25 wishes of Ableco. It has an absolute right to cancel the

1 proposed sale. If the debtor takes any action outside the
2 prepi -- the prescribed course of sale, Ableco can in effect
3 pull the plug. Looking at the use of cash collateral, it is
4 inextricably intertwined with the debtor-in-possession
5 financing. The debtor only seeks to use cash collateral upon
6 the terms set forth in the financing motion. The Court
7 concludes that several of the terms contained in the cash
8 collateral agreement prejudice the powers and rights of the
9 Code -- that the Code confers for the benefit of all creditors,
10 thereby leveraging the Chapter 11 process by granting a lender
11 excessive control over the debtor or its assets to the
12 prejudice of other parties in interest, quoting Berry Good
13 again, 400 Bankruptcy Reporter at 747.

14 These have all previously been mentioned in a ruling
15 and include the payment of post-petition interest on the
16 prepetition claim. As a general rule, under-secured creditors
17 are not entitled to pre-confirmation payment of their
18 prepetition claim. Berry Good, 400 Bankruptcy Reporter at page
19 746. Nothing in the record is -- there is nothing in the
20 record to support adequate protection payments to Ableco on
21 account of its prepetition claim, no showing that its overall
22 collateral condition would be harmed by the use of cash
23 collateral based upon the budget. The proposed budget does not
24 illuminate the overall collateral position of Ableco; it simply
25 shows a potential flow of cash.

1 Ableco attempts to correct the issue of this payment
2 in its most recent version of the financing order by stating
3 that if it is later determined that Ableco was not entitled to
4 adequate protection, the payments will be treated as payments
5 on their prepetition claim. This court is aware of no
6 authority that allows a creditor not entitled to adequate
7 protection payments to be paid on its prepetition claim in the
8 absence of a plan, especially while other creditors sit and are
9 paid nothing. The Court in Berry Good express -- expressly
10 rejected the idea that a post-petition lender could loan money
11 to a debtor for the payment of its prepetition debt.

12 In addition, as previously noted, the proposed
13 financing arrangement including the use of cash collateral
14 requires the debtor to waive its right to seek use of cash
15 collateral or post-petition lending on any other terms or from
16 any other entity, requires the broad indemnification of the
17 lender, the waiver and surrender of all claims against the
18 lender, the broad remedies of default with respect to
19 Able -- granted to Ableco with respect to third parties such as
20 landlords, the inability of any party to even seek a surcharge
21 of Ableco's collateral, the short-term review period of
22 Ableco's claims, the granting of Ableco -- or to Ableco of the
23 lien on all Chapter 5 claims in this case, the ability of the
24 debtor and the lender to modify the financing arrangement
25 without Court approval, payment of Ableco's expenses without

1 Court approval, and the items in the budget previously
2 discussed.

3 I'm looking at my notes. One item I may have missed
4 in the budget that is in the budget that is not a necessary
5 expense is the \$100,000.00 item for utility deposits based upon
6 the statements of counsel for the debtor yesterday on that
7 motion. None of the utilities are requiring a deposit -- a
8 security deposit. The ruling of the Court is that the
9 financing motion, including the use of cash collateral on the
10 terms proposed therein is not approved. The ruling is without
11 prejudice to further request for approval of financing and/or
12 the use of cash collateral.

13 Looking at the sales procedure motion, the discussion
14 may be academic given the ruling on the finance motion and
15 statements of debtor's counsel and Ableco's counsel that the
16 finance motion and the sales procedures motion are inextricably
17 intertwined. It would appear that denial of the finance motion
18 effectively operates as a denial of the sale procedures motion.
19 However, it might be -- further review of that motion may be of
20 assistance to the parties and to any party or court that
21 reviews this court's decision.

22 There are objections to the part -- the objections to
23 the sale procedures motion may be summarized as follows.
24 Baker Hughes objects that the proposed sale does not allocate
25 purchase price among assets and violates Section 363(f) of the

1 Code, as the lien claims of Baker are not expressly assumed
2 under the terms of the sale and Baker does not consent to the
3 sale. Williams and Penn Virginia argue that the proposed sale
4 violates notions of due process, that it is occurring much too
5 quickly, that is is premised on a presumption that Ableco is
6 the first lien holder on every -- of -- with respect to every
7 asset in this case and that the sales procedure does nothing to
8 protect other lien claimants.

9 The United States Trustee has noted that allowing
10 Ableco to credit bid its debt is -- debt is problematic when
11 there are at least nine million dollars and other lien
12 claimants and a potential lien priority issue and argues that
13 any credit bid must provide for some form of cash reserves or
14 procedures to provide for payment of creditors determined to be
15 superior to Ableco.

16 U.S. Trustee objects to the breakup fee, argues that
17 the sale process must provide from input from the parties in
18 interest including the creditors and the Unsecured Creditors
19 Committee. The U.S. Trustee objects to the bid protections and
20 expense reimbursement proposal as excessive and inappropriate
21 and argues that this court should grant a reasonable extension
22 of the sale process to allow these questions to be addressed.

23 The Court notes that under the terms of the proposed
24 agreement once again the sale of assets less -- rests largely
25 within the discretion of Ableco. Under their participation

1 requirements qualified bidders are defined as those determined
2 to have satisfied the conditions of the bid requirements in the
3 determination of the debtor and its advisors. Is Ableco an
4 advisor for purposes of this section? It's unclear. Under the
5 bid requirements the debtor shall determine whether a bid
6 qualifies as a qualified bid and, again, we have a qualified
7 bidder as one who can provide reasonably satisfactory evidence
8 in the discretion of debtor and its advisors of its financial
9 ability. The identity of the advisors is not limited to
10 exclude representatives of Ableco or the stalking horse.

11 Both the motion at paragraph 56 in the original
12 proposed order at paragraph 18 conditioned determination of a
13 qualified bidder and qualified bids on the consent of Ableco.
14 That provision was removed in the most recent form of proposed
15 order and assurances were made by counsel for Ableco that that
16 provision never should have been in the original order.
17 Despite those assurances, the Court was and remains at least a
18 bit concerned by the initial presence of these provisions.

19 In the revised sale order the ability of the stalking
20 horse credit bidder -- or excuse me, the ability of the
21 stalking horse bidder to credit bid is and I quote, "Subject to
22 the rights of the Creditors Committee or any other nondebtor
23 party in interest to assert challenges provided in the Court's
24 final order under 11 U.S.C.," et cetera, "to authorize the
25 debtor to incur indebtedness," et cetera. So in other words,

1 the ability of the stalking horse bidder to bid is subject to
2 the rights of any creditor to object to the validity of that
3 claim within 45 days. In the eyes of the Court the relief here
4 is ethereal. Even if the Ableco claim is contested, that
5 process cannot be concluded and the validity of the claim
6 determined prior to the date of the sale.

7 Under the terms of the auction, regardless of outcome
8 of bidding, the rules state that the debtor may adjourn the
9 auction with the consent of Ableco. Furthermore, if the
10 winning bid -- it should be noted that Ableco is not - by the
11 way of credit bid, and I use Ableco and stalking horse bidder
12 interchangeably here because a stalking horse bidder is credit
13 bidding Ableco's debt. If the winning bid is insufficient to
14 cover Ableco's debt, then Ableco has the sole discretion to
15 withhold seeking approval of the sale by the Court. It's found
16 in Docket Number 23-1, the proposed order at page 16.

17 Furthermore, under Section 6.23(3) at page 53, the
18 debtor-in-possession agreement -- an interesting place to have
19 to find it -- Ableco has the right to terminate the sale
20 process within its sole discretion at any time and for any
21 reason or for no reason at all. Debtor, with the express
22 written consent of Ableco, may modify the bid procedures set
23 out in the order at any time prior to or during the auction
24 without any further notice or Court approval.

25 If you look at the Court's concerns at some of these

1 objections, it does seem to the Court that the sale procedures
2 motion was drafted under the premise that there were no other
3 lien holders claiming a lien upon any of the debtor's assets.
4 The credit bid procedures contain no provisions for dealing
5 with any superior claims. The motion simply states that with
6 respect to any 363(f) issues the debtor will address those at
7 the sale hearing.

8 The Court is not convinced that an approach that
9 basically says "trust me, I'll deal with this later" is the
10 best approach to any Section 363(f) issues. Given that the
11 proposed sale is a sale in bulk of all of the debtor's assets,
12 these issues are going to exist, whether the sale is to a
13 credit bidder or a cash bidder. The Court is unsure as to why
14 at least some effort to deal with these issues now is not in
15 order.

16 The Court also finds that the breakup fee is not
17 supported by the evidence presently before the Court. A 1992
18 decision in the United States Bankruptcy Court for the District
19 of Colorado entitled In the Matter of Twenver, T-W-E-N-V-E-R,
20 Incorporated, 149 Bankruptcy Reporter 954 at page 956, suggest
21 three questions for courts to consider in evaluating breakup
22 fees: Whether the relationship of the parties who negotiated
23 the fee is marked by self-dealing or manipulation; whether the
24 fee hampers rather than encourages bidding; whether the amount
25 of the fee is reasonable in relation to the proposed purchase

1 price. This court is aware of no case where a breakup fee was
2 awarded to a credit bidder or a creditor of the debtor. If CME
3 is so closely affiliated with Ableco as to be allowed to credit
4 bid its debt, then it is reasonable to treat it as a creditor
5 for bidding purposes.

6 The record before the Court also does not establish
7 justification for the breakup fee. It's not related to any
8 actual expenses. Ableco wants those as well. There's nothing
9 in the record to indicate that Ableco prepared the data room.
10 That was done by A&M. The Court does not see how on the record
11 the breakup fee encourages bidding in this case. There may be
12 other facts that would support the breakup fee but they are not
13 presently before the Court. The basis for expense
14 reimbursement also seems to be a bit problematic given the fact
15 that none of the fees are subject to anyone's review.

16 It is therefore the ruling of the Court that the
17 motion -- the sale motion and the motion for bidding procedures
18 is denied without prejudice.

19 There are other -- there were other matters on
20 yesterday's docket. The application for order approving GMP
21 Securities, LP, the motion for order establishing interim
22 compensation and expense reimbursement procedure, the hearing
23 on those motions as well as -- or -- is continued to Wednesday,
24 June 24, 2009, at 1:30 p.m. in Courtroom 2, the Federal
25 Building, 224 South Boulder, Tulsa, Oklahoma.

1 With respect to the critical vendor motion, at this
2 point the debtor has no authorization to use cash collateral or
3 financing. The Court will consider resetting that motion
4 should that financing emerge.

5 I want to at this point advise the parties -- I did
6 advise you yesterday regarding my schedule. I am out of the
7 office tomorrow and Thursday. I am available Friday afternoon
8 at 3:00. I have a committee meeting that day for the
9 Bankruptcy Appellate Panel that will take most of that day. I
10 anticipate -- I'm fully aware that the effect of this ruling is
11 to send the parties back to the drawing board. I expect -- I
12 will be surprised if there isn't some sort of financing
13 authority requested on a relatively short basis.

14 If such a request is filed by noon tomorrow, I will
15 see to it that an emergency hearing is set Friday afternoon,
16 and by that I mean Friday, June 12, at 3:00 p.m., here in
17 Tulsa. If that date is not hit, the next time that I am in the
18 State of Oklahoma is on Friday, June 19th. The next hearing
19 dates I have after that are June 24th and 25th and, in fact,
20 some of the Mahalo matters have already been set, as I
21 indicated on the 24th. I simply wanted the parties to be aware
22 of that schedule as they continue their efforts in this matter.

23 This concludes the ruling of the Court. This hearing
24 is adjourned. Counsel are excused and the Court will stand in
25 recess.

Thank you for your time, folks.

(Proceedings concluded at 2:57 p.m.)

* * * * *

1 I certify that the foregoing is a court transcript
2 from an electronic sound recording of the proceedings in the
3 above-entitled matter.

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Ruth Ann Hager

8 Dated: June 22, 2009
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